

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
2 WESTERN WASHINGTON REGION  
3 STATE OF WASHINGTON  
4

5 WHIDBEY ENVIRONMENTAL ACTION  
6 NETWORK (WEAN),

7  
8 Petitioner,

9 v.

10 ISLAND COUNTY,  
11

12 Respondent.  
13

Case No. 14-2-0009

**ORDER GRANTING  
RECONSIDERATION**

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15 This matter came before the Board on WEAN's April 18, 2017 Motion for  
16 Reconsideration of the Board's Order Finding Compliance and Closing Case (Compliance  
17 Order).<sup>1</sup> Island County (County) responded on April 26, 2017.<sup>2</sup>  
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19 **I. ANALYSIS AND DISCUSSION**

20 A motion for reconsideration of a final decision of the Board is governed by WAC  
21 242-03-830. WAC 242-03-830(2) provides that a motion for reconsideration shall be based  
22 on at least one of the following grounds:  
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24 (a) Errors of procedure or misinterpretation of fact or law, material to the party  
25 seeking reconsideration; or

26 (b) Irregularity in the hearing before the board by which such party was  
27 prevented from having a fair hearing.

28 WEAN contends that the Board's Compliance Order included the following material  
29 misinterpretations of both fact and law:  
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<sup>1</sup> Issued on April 10, 2017.

<sup>2</sup> Island County's Answer in Opposition to Petitioner's Motion for Reconsideration.

- The Board's denial of WEAN's motion to supplement the record with transcripts of Island County Planning Commission and Commissioner meetings and hearings (proposed exhibit numbers R-449, R-450, R-451, and R-452);
- The Board's conclusions in regards to the different criteria applicable to the designation of Western toad "occurrences";
- The Board's understanding or interpretation of the Best Available Science (BAS) as it relates to Western toad non-breeding habitat, including its range or dispersal distance.

### **Supplementation with Transcripts**

A review of the Board's order supports WEAN's contention that the various meeting transcripts were denied for supplementation.<sup>3</sup> In denying "supplementation" of the record with those transcripts the Board erred. The Board is required to render its decisions based "on the record developed" by the jurisdiction.<sup>4</sup> That record is required to include "all material used in taking the action which is the subject of the petition for review, including materials submitted in public comment".<sup>5</sup> As part of the record assemblage a challenged jurisdiction is also required to make available "the written or electronic record of the legislative proceedings where action was taken . . . for inspection or transcription".<sup>6</sup>

It is thus clear that the Board misinterpreted the law in considering WEAN's request as one for supplementation of the record. Transcripts of planning commission and county commissioner public hearings and meetings at which the proposed legislative action was discussed are part of the record. There is no requirement that the record be "supplemented" with such transcripts.

Based on that conclusion, the Board will grant WEAN's motion for reconsideration. Consideration of WEAN's substantive arguments will be deferred until such time as the

<sup>3</sup> Order Finding Compliance and Closing Case at 4.

<sup>4</sup> RCW 36.70A.290(4).

<sup>5</sup> WAC 242-03-510(1).

<sup>6</sup> WAC 242-03-510(2).

1 transcripts have been prepared and submitted to the Board for its review. Two weeks from  
2 the date of this order should provide WEAN sufficient time for the preparation of the  
3 transcripts. Thereafter, the County shall have one week to verify the accuracy of the  
4 transcriptions. The Board will expect the transcripts three weeks from the date of this order.  
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6 **ORDER**

7 Based on the foregoing, WEAN's Motion for Reconsideration is granted.  
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9 SO ORDERED this 1st day of May, 2017.  
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12 William Roehl, Board Member  
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15 Nina Carter, Board Member  
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18 Raymond L. Paoella, Board Member  
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